

AMENDED IN SENATE MAY 5, 2009  
AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 18**

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**Introduced by Senator Oropeza**

December 1, 2008

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An act to amend Section 368 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Oropeza. Elder or dependent adult abuse.

Existing law makes it a crime for a person who knows or reasonably should know that a person is an elder or dependant adult, under circumstances likely to produce great bodily harm or death, to willfully cause or permit any elder or dependent adult to suffer, or inflict unjustifiably physical pain or mental suffering thereon, or to cause or permit the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, as specified. Existing law punishes a violation of this provision by imprisonment in a county jail not exceeding one year, or by a fine not to exceed \$6,000, or by both that fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 4 years.

This bill would increase the fine for a *second or subsequent* violation of that provision to an amount not to exceed \$10,000.

Under existing law, a person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes an elder or dependent adult to suffer, or inflicts physical pain or mental suffering thereon, or permits the health of the elder or dependent adult to be endangered is guilty of a misdemeanor. Existing law punishes a second or subsequent violation

of that provision by a fine not to exceed \$2,000 or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

This bill would increase the fine for a second or subsequent violation of that provision to an amount not to exceed \$5,000.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 368 of the Penal Code is amended to  
2 read:

3 368. (a) The Legislature finds and declares that elders and  
4 dependent adults are deserving of special consideration and  
5 protection against crimes, not unlike the special protections  
6 provided for minor children, because elders and dependent adults  
7 may be confused, on various medications, mentally or physically  
8 impaired, or incompetent, and therefore less able to protect  
9 themselves, to understand or report criminal conduct, or to testify  
10 in court proceedings on their own behalf.

11 (b) (1) Any person who knows or reasonably should know that  
12 a person is an elder or dependent adult and who, under  
13 circumstances or conditions likely to produce great bodily harm  
14 or death, willfully causes or permits any elder or dependent adult  
15 to suffer, or inflicts thereon unjustifiable physical pain or mental  
16 suffering, or having the care or custody of any elder or dependent  
17 adult, willfully causes or permits the person or health of the elder  
18 or dependent adult to be injured, or willfully causes or permits the  
19 elder or dependent adult to be placed in a situation in which his or  
20 her person or health is endangered, is punishable by imprisonment  
21 in a county jail not exceeding one year, or by a fine not to exceed  
22 ~~ten~~ six thousand dollars ~~(\$10,000)~~ (\$6,000) upon a first conviction  
23 or a fine not to exceed ten thousand dollars (\$10,000) upon a  
24 second or subsequent conviction, or by both that fine and  
25 imprisonment, or by imprisonment in the state prison for two,  
26 three, or four years.

27 (2) If in the commission of an offense described in paragraph  
28 (1), the victim suffers great bodily injury, as defined in Section  
29 12022.7, the defendant shall receive an additional term in the state  
30 prison as follows:

1 (A) Three years if the victim is under 70 years of age.

2 (B) Five years if the victim is 70 years of age or older.

3 (3) If in the commission of an offense described in paragraph  
4 (1), the defendant proximately causes the death of the victim, the  
5 defendant shall receive an additional term in the state prison as  
6 follows:

7 (A) Five years if the victim is under 70 years of age.

8 (B) Seven years if the victim is 70 years of age or older.

9 (c) Any person who knows or reasonably should know that a  
10 person is an elder or dependent adult and who, under circumstances  
11 or conditions other than those likely to produce great bodily harm  
12 or death, willfully causes or permits any elder or dependent adult  
13 to suffer, or inflicts thereon unjustifiable physical pain or mental  
14 suffering, or having the care or custody of any elder or dependent  
15 adult, willfully causes or permits the person or health of the elder  
16 or dependent adult to be injured or willfully causes or permits the  
17 elder or dependent adult to be placed in a situation in which his or  
18 her person or health may be endangered, is guilty of a  
19 misdemeanor. A second or subsequent violation of this subdivision  
20 is punishable by a fine not to exceed five thousand dollars (\$5,000),  
21 or by imprisonment in a county jail not to exceed one year, or by  
22 both that fine and imprisonment.

23 (d) Any person who is not a caretaker who violates any provision  
24 of law proscribing theft, embezzlement, forgery, or fraud, or who  
25 violates Section 530.5 proscribing identity theft, with respect to  
26 the property or personal identifying information of an elder or a  
27 dependent adult, and who knows or reasonably should know that  
28 the victim is an elder or a dependent adult, is punishable by  
29 imprisonment in a county jail not exceeding one year, or in the  
30 state prison for two, three, or four years, when the moneys, labor,  
31 goods, services, or real or personal property taken or obtained is  
32 of a value exceeding four hundred dollars (\$400); and by a fine  
33 not exceeding one thousand dollars (\$1,000), by imprisonment in  
34 a county jail not exceeding one year, or by both that fine and  
35 imprisonment, when the moneys, labor, goods, services, or real or  
36 personal property taken or obtained is of a value not exceeding  
37 four hundred dollars (\$400).

38 (e) Any caretaker of an elder or a dependent adult who violates  
39 any provision of law proscribing theft, embezzlement, forgery, or  
40 fraud, or who violates Section 530.5 proscribing identity theft,

1 with respect to the property or personal identifying information of  
2 that elder or dependent adult, is punishable by imprisonment in a  
3 county jail not exceeding one year, or in the state prison for two,  
4 three, or four years when the moneys, labor, goods, services, or  
5 real or personal property taken or obtained is of a value exceeding  
6 four hundred dollars (\$400), and by a fine not exceeding one  
7 thousand dollars (\$1,000), by imprisonment in a county jail not  
8 exceeding one year, or by both that fine and imprisonment, when  
9 the moneys, labor, goods, services, or real or personal property  
10 taken or obtained is of a value not exceeding four hundred dollars  
11 (\$400).

12 (f) Any person who commits the false imprisonment of an elder  
13 or a dependent adult by the use of violence, menace, fraud, or  
14 deceit is punishable by imprisonment in the state prison for two,  
15 three, or four years.

16 (g) As used in this section, “elder” means any person who is 65  
17 years of age or older.

18 (h) As used in this section, “dependent adult” means any person  
19 who is between the ages of 18 and 64, who has physical or mental  
20 limitations which restrict his or her ability to carry out normal  
21 activities or to protect his or her rights, including, but not limited  
22 to, persons who have physical or developmental disabilities or  
23 whose physical or mental abilities have diminished because of  
24 age. “Dependent adult” includes any person between the ages of  
25 18 and 64 who is admitted as an inpatient to a 24-hour health  
26 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the  
27 Health and Safety Code.

28 (i) As used in this section, “caretaker” means any person who  
29 has the care, custody, or control of, or who stands in a position of  
30 trust with, an elder or a dependent adult.

31 (j) Nothing in this section shall preclude prosecution under both  
32 this section and Section 187 or 12022.7 or any other provision of  
33 law. However, a person shall not receive an additional term of  
34 imprisonment under both paragraphs (2) and (3) of subdivision  
35 (b) for any single offense, nor shall a person receive an additional  
36 term of imprisonment under both Section 12022.7 and paragraph  
37 (2) or (3) of subdivision (b) for any single offense.

38 (k) In any case in which a person is convicted of violating these  
39 provisions, the court may require him or her to receive appropriate  
40 counseling as a condition of probation. Any defendant ordered to

1 be placed in a counseling program shall be responsible for paying  
2 the expense of his or her participation in the counseling program  
3 as determined by the court. The court shall take into consideration  
4 the ability of the defendant to pay, and no defendant shall be denied  
5 probation because of his or her inability to pay.

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